



Kerry Manworren appeals the order that he pay \$136 per week in child support. He claims the court deviated from the support amount that would result from application of the Child Support Guidelines (\$90), but did not enter the findings required by Ind. Child Support Rule 3 to justify such a deviation. The court did not enter findings supporting a deviation, and Kerry's ex-wife, Abby Manworren Courts, concedes application of the Guidelines to the facts properly found by the trial court results in a \$90 support obligation. (Appellee's Br. at 5.) We must therefore reverse and remand.

### **FACTS AND PROCEDURAL HISTORY**

The court dissolved the parties' marriage on October 24, 2003. On June 8, 2005, Kerry filed a petition to modify support. After hearing evidence, the court entered the following order regarding support:

Petition for Modification of Decree of Dissolution filed by Kerry on June 8, 2005:

Kerry requests the court to modify the order for him to pay child support to Abby for the 3 children claiming that the parties' incomes have changed, the visitation credit has changed and the child support is "excessive." The child support order was entered on October 10, 2003. It provided that Kerry was to pay Abby \$96.00 per week plus 28% of his commissions and bonuses over base income of \$462.00.

Both parties submitted evidence as to their own and each other's income. Kerry's evidence indicated his income ranged from \$811.48 to \$919.67 per week for 2004 and 2005. He also alleged that he was unemployed during much of the time even though he drives a Corvette and a Dodge Ram pickup and continues to live in the marital residence. He stated that he sold a restored Dodge collector car to his girlfriend for \$1,000.00 even though he had recently paid over \$16,000.00 to have it restored. At the last hearing, Kerry stated that he was now working but only earns \$2,500.00 per month. Kerry continues to deny receiving any revenue from his girlfriend's mortgage brokerage business.

Abby stated that Kerry also drives a Hummer, a new Pontiac Grand Prix, and a Harley Davidson motorcycle. She states that Kerry has Colts and Pacer season tickets. Abby testified that Kerry's income ranged between \$1,027.00 and \$1,250.00 per week. Abby requests that child

support be increased to \$307.00 per week. She stated that her gross income was \$1,058.00 per week; however Kerry alleges that Abby's income is \$1,421.32 per week. Abby admits that she has worked extra, or overtime, in order to pay her bills, including her substantial attorney fees.

A court may modify a child support order upon a showing of a change in circumstances so substantial and continuous as to make the terms unreasonable, or upon a showing that the order differs by more than 20% and more than 12 months have passed since the prior order. I.C. 31-16-8-1.

In the present case, the court finds that there has been a change in circumstances so substantial and continuous as to make the prior order unreasonable. The court concludes that the base income of each party should be used for calculating child support. Kerry's reported current gross weekly income is \$576.00. Abby's base gross weekly income is \$1,058.00. Kerry pays \$62.00 per week for medical insurance for the boys. Abby incurs childcare expenses of \$160.00 per week. Kerry should receive parenting time credit of \$89.00 per week.

Accordingly, the court modifies the prior child support order. Kerry is ordered to pay \$136.00 per week to Abby for child support beginning on Friday, August 4, 2006 and each Friday thereafter until further order. Counsel for Abby to provide the court with an income withholding order.

The court finds that Kerry is in arrears on child support in the amount of \$3,608.00 as of May 1, 2006. The court orders Kerry to bring all arrearage current within 60 days. The court also orders Kerry to pay Abby's attorney fees \$2,500.00 within 45 days incurred for the enforcement of the child support order.

The court denies Kerry's request for attorney fees on the modification motion. The court denies Abby's request for attorney fees on the modification.

(App. at 39-41.) Kerry filed a motion to correct error, which the trial court denied.

## **DISCUSSION AND DECISION**

Kerry appeals the denial of his motion to correct error, which motion alleged the court erroneously calculated his support obligation. We review the trial court's denial of such a motion for an abuse of discretion. *Benjamin v. Benjamin*, 849 N.E.2d 719, 723 (Ind. Ct. App. 2006). We reverse only if the trial court's decision is clearly against the logic and effect of the facts and circumstances that were before the court, and the

reasonable inferences drawn therefrom, or if the court's decision was without reason or based on impermissible considerations. *Id.*

Abby "accepts Kerry's argument that by strictly using the parties' 'base incomes' of \$576 for Kerry and \$1,058 for Abby, Kerry's child support obligation would be \$90 per week." (Appellee's Br. at 5.) Accordingly, we will not address the calculations based on the child support worksheet. Rather, we presume, based on the agreement of the parties, the application of the child support guidelines would result in a support obligation of \$90 for Kerry.

However, the court ordered Kerry to pay \$136 per week in support. Kerry asserts this is erroneous because the court did not enter findings to support such an order. Child Supp. R. 3 provides:

If the court concludes from the evidence in a particular case that the amount of the award reached through application of the guidelines would be unjust, the court shall enter a written finding articulating the factual circumstances supporting that conclusion.

*See also Fuchs v. Martin*, 836 N.E.2d 1049, 1057 (Ind. Ct. App. 2005) ("A calculation of child support made under the Guidelines is presumptively valid. . . . A court may deviate from the Guidelines only if it provides written findings to justify the deviation."), *summarily aff'd* 845 N.E.2d 1038, 1040 (Ind. 2006).

Abby responds "the evidence supports the findings related to Kerry's additional expenditures and probable income justifying a deviation from the amount recommended by the Indiana Child Support Guidelines." (Appellee's Br. at 6.) Our review of the order supports Kerry's interpretation.

The court's order includes three paragraphs outlining the evidence presented by each party. The court's reiteration of a party's testimony and evidence is not a "finding" by the court:

Here, our review of the record reveals that many of the purported findings are not findings of fact. Instead, the findings are a recitation of the evidence that was presented at the hearing. In particular, throughout the findings in question, the trial court noted that various witnesses testified or observed certain details. Our supreme court has previously held that statements of this kind are not findings of basic fact in the spirit of the requirement. A court or administrative agency does not find something to be a fact by merely reciting that a witness testified to X, Y, or Z. Rather, the trier of fact must find that what the witness testified to is the fact. Additionally, the trier of fact must adopt the testimony of the witness before the finding may be considered a finding of fact.

*In re Adoption of T.J.F.*, 798 N.E.2d 867, 874 (Ind. Ct. App. 2003) (internal citations and quotations omitted).

The court's findings begin in the paragraph that begins: "In the present case, the court finds . . . ." (App. at 41.) The findings include nothing to justify a deviation from "the amount of the award reached through application of the guidelines." Child Supp. R. 3. Accordingly, we reverse and remand so the court may either set Kerry's child support obligation at \$90.00 or enter findings to justify deviating therefrom.

Reversed and remanded.

NAJAM, J., and MATHIAS, J., concur.